IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 3066 OF 2004

Shri. Pramod Waman Kadam ...Applicant

Versus

The State of Maharashtra ...Respondent

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Shri. Ramrao Adik, Sr. counsel with Mr. Abhay Thorat, Adv. for the applicant.

Shri. A.S. Gadkari, A.P.P. for Respondent-State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 15TH SEPTEMBER, 2004

P.C.:-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the State.

2. The applicant is seeking bail in C.R. No. 33 of 2002 registered at Anti Corruption Bureau, Mumbai. The said C.R. is registered under Sections 409, 480, 420, 465, 466, 467, 468, 471, 474, 477, 380, 381, 457 r.w. section 120-B and 201 read with section 34 of I.P.C. and sections 13 (1) (d) of the Maharashtra Prevention of Corruption Act and sections 5, 7 and 8 of Maharashtra Prevention of Malpractices at University, Board and other specific Examinations Act, 1982. The said case is commonly known as the "MPSC SCAM".

3. The applicant had earlier preferred an application for bail before this Court being Criminal application No. 2929 of 2003. By detailed speaking order the said application came to be rejected by this Court. Thereafter, the applicant had preferred criminal application No. 5324 of 2003. The said application also came to be rejected by this Court by order dated 24th March, 2004. Thereafter, the present application has been preferred. The changed circumstances which have been relied upon for preferring the present application are that four accused persons i.e. Hukumsingh Bhati, Vishwanath Kelkar, Jaya Kadam and Sayalee Joshi have been granted bail by this Court.

4. It may be stated here that the ground that co-accused Hukumsingh Bhati and Vishwanath Kelkar have been granted bail was specifically pleaded and considered by me while deciding criminal application No. 5324 of 2003. Hence, this ground cannot be said to be a new ground. Moreover, the order of rejection in criminal application No. 5324 of 2003 has not been challenged.

5. I have perused the order of this Court whereby Mrs. Jaya Baban Kadam came to be granted bail. On perusal of the order, it is seen that Mrs. Jaya Kadam was granted bail on the ground that she was a

lady and her only role was that she assisted her husband in distribution and investment of assets collected by her husband Baban Kadam by taking bribe or illegal money from the students appearing for the M.P.S.C. examinations. There is enough material in the present case which is reflected in the statements of witnesses that the applicant had demanded and accepted money from various candidates appearing for the M.P.S.C. examination. In such case, the role of Mrs. Jaya Kadam and the present applicant cannot be said to be similar.

6. I have also perused the order whereby Mrs. Sayalee Joshi came to be granted bail by this Court. In the said order, it is clearly reflected that nothing was argued on the merits of the case by both the sides. Mrs. Sayalee Joshi came to be granted bail only on technical point that no sanction to prosecute was awarded in her case. On this technical ground also the applicant cannot claim parity, moreover no such ground been argued on behalf of the applicant. Thus, the applicant cannot claim parity with any of these co-accused who have been granted bail in this case.

7. Thereafter, it is submitted on behalf of the applicant that he has been in custody for about 24 months and hence the applicant should be released

on bail. Reliance has been placed on the decision of the Supreme Court in the case of **Mehmood Mohamed Sayeed Vs. State of Maharashtra reported in (2002) 10 SCC 677** and in the case of **Sri Ram Chaubey Vs. State of Bihar reported in (2002) 10 SCC 199.** In the said two cases the accused came to be released on bail as they were in custody for over a year. In view of these two decision it is submitted that as the present applicant is in custody for about two years, he may be released on bail. However, the learned A.P.P. has placed reliance on the decision of the Supreme Court in the case of Avinash T. Sanas who is the co-accused of the present applicant. The learned A.P.P. has submitted that though the co-accused Avinash Sanas was also in custody for more than the period that the present applicant has been in custody, the Special Leave Petition preferred by co-accused Avinash Sanas against the order of this Court rejecting the bail application came to be dismissed by order dated 30.7.2004. The said SLP is Numbered as SLP (Crl.) 511 of 2004. Looking to these facts, I am not inclined to release the applicant on bail even on the ground that he has been in custody for about 24 months.

8. Looking to all these facts, I do not think that this is a fit case to grant bail to the applicant.

Application is rejected.

9. Authenticated copy of this order be supplied to the parties.